IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 207 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANCHAL ENGINEERING WORKS THRO' PAH VALJIBHAI HARIBHAI & 1 - Applicant(s)

Versus

RIYAZ YUSUFBHAI LALIWALA & 7 - Opponent(s)

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Appearance :
MR DHIRAJ M PATEL for Applicant(s) : 1 - 2.
None for Opponent(s) : 1 - 8.
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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 13/09/2005

ORAL JUDGMENT

The original defendant-tenants are before this Court being aggrieved of judgement and decree dated 23.08.2004 passed by the learned Small Cause Judge, Ahmedabad in HRP Suit No.2055 of 1993, which was

confirmed in Civil Appeal No.129 of 2004 by the Appellate Bench of the Small Cause Court, Ahmedabad vide judgement dated 10.01.2005. The learned Trial Judge decreed the suit directing the defendants to hand over vacant, peaceful possession of the premises on or before 30.09.2004. The learned Judge also directed the defendants to pay arrears of rent amounting to Rs.21,471/-, which were due from **01.06.1981 to 31.08.1985** at the rate of Rs.421/- per month to the landlord, also the mesne profit of Rs.208/- for the period from 01.09.1985 to 20.09.1985. The learned Judge also directed the defendants to continue to pay the mesne profit of Rs.421/- per month from 01.09.1985 till possession is handed over. The learned Judge directed the plaintiffs to give credit of the amount deposited by the defendants in the Court towards the amount of arrears of rent and mesne profits. Standard rent of the premises was fixed at the rate of Rs.421/- excluding municipal taxes and other taxes.

2. Mr.Patel, learned advocate for the petitioners vehemently submitted that both the learned Judges have not applied their mind and in particular the first

appellate Judge has failed to apply mind to the contentions raised by the petitioners-original defendants in appeal memo. The learned advocate submitted that amount of Rs.70,098/- was paid on various dates between 14.11.1995 to 19.07.2004. He submitted that after said deposits the petitioner-tenant was not in arrears of rent, besides the tenant was always ready and willing to pay rent. He further submitted that as the liability to pay taxes even as per the rent note was not on monthly basis, but was on yearly basis, protection under section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "Bombay Rents Act") was available to the tenant.

3. The First Appellate Court in para 3 of its judgement has observed as under:

> ".. .. This appeal is heard at a length at the admission stage as a short question of law and facts involved. The learned advocate for the appellant Mr.R.K. Pandya has mainly assailed the service of the notice and submitted that the suit notice has not been

properly served and therefore, the learned Trial Judge ought to have dismissed the suit which is mainly on the ground of arrears of rent. On the other hand Mr.Deven Desai, learned advocate for the respondents has supported the judgement and decree passed by the learned Trial Judge and submitted that the defendants have not paid the decretal dues even after filing of this appeal. Therefore, this appeal may be dismissed summarily. In view of the ground raised in the appeal memo and in view of the pleadings of the parties, following points arise for our consideration:"

The first appellate court then raised various issues such as:

"(1) Whether the learned Trial Judge has made an error in holding that the suit notice is properly served to the defendants and it is legal and valid notice?

(2) Whether the learned Trial Judge has committed an error in holding that the

defendants are tenant in arrears of rent for the period of more than six months?

(3) ...

(4) ...

(5) Whether the learned Trial Judge has committed an error in holding that the rent is outstanding to the tune of Rs.21,471/- from 01.06.1981 to 31.08,1985 at the rate of Rs.421/- per month?

(6) ...

(7) ...

(8) ...”

4. The learned First Appellate Judge has then answered the same after considering the rival contentions in this regard and affirmed the judgement of the learned Trial Judge. Whereas the learned Trial Judge has taken pains to appreciate and consider the evidence in detail including the documentary evidence as well as depositions of the witnesses examined by both the parties. The learned Trial Judge has then recorded a finding that the notice was duly served to the defendants, that the defendants are in arrears of rent for more than six months and that the defendants are liable to pay a sum

of Rs.21,471/- towards rent from 01.06.1981 to 31.08.1985 at the rate of Rs.421/- per month.

5. Mr.Patel, the learned advocate assailed the judgement and decree mainly on the ground that the petitioner-tenant was not in arrears of rent as he had deposited the entire amount of arrears between 14.11.1995 to 19.07.2004, and therefore, protection available under Section 12(3)(b) of the Act which provides that in cases where rent is not payable by month, no decree for eviction shall be passed, if on the first day of the hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due. The learned advocate is not able to point out the compliance of the requirement of section 12(3)(b) and hence his submission cannot be accepted.

Protection available under section 12(3)(b) of the Act is not absolute. It is conditional; unless conditions provided therein are fulfilled one does not get protection available under this section. Only because at some point of time, which is later than the time prescribed under the section, the arrears are deposited,

the protection of section 12(3)(b) does not become available.

6. The learned advocate next contended that the service of notice was not properly made. He submitted that if the petitioner-tenants were available in the premises, there was no question of serving notice by affixing the same at a conspicuous place of the demised premises. In this regard he relied upon a decision of the Allahabad High Court in the matter of Chhedi Lal Vs. Munnu Sardar, reported in A.I.R. 1983 Allahabad 274. If the relevant facts of the case on hand are perused it is clear that the landlord had tried to serve the notice to the petitioner-tenant firstly by Registered Post A.D. which was returned with an endorsement, “Not found and not claimed”. It is thereafter that the landlord had to undertake the exercise of serving the notice by affixing. In addition to that the landlord also served the said notice “Under Certificate of Posting”. The learned Trial Judge in his detailed discussion has recorded a finding that the address on which notice was sent by Registered Post A.D. Letter, was the same which was supplied by the petitioners. The learned Judge therefore, recorded a

finding that the notice was validly served.

7. In view of the aforesaid discussion this Court finds no substance in the Revision Application, the same fails and is dismissed.

(RAVI R. TRIPATHI, J.)

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